

### **REMARKS/ARGUMENTS**

Claims 1-13 are currently pending. No claims have been amended. No claims have been canceled. No new matter has been added. After entering this amendment, claims 1-13 will remain pending in this application.

### **Claim Rejections – 35 U.S.C. § 102**

Claims 7-13 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,517,978 (“Levin et al.”). The Applicant notes the Patent No. of 5,517,978 appears to have a typographic error in that U.S. Patent No. 5,517,978 is to Alex C. Yi for a “Pollution Control System for an Internal Combustion Engine.” The Applicant assumes that the Office Action intended to apply U.S. Patent No. 4,517,978 to Levin et al. for a “Blood Sampling Instrument.” The following response is based on this assumption.

#### **Independent Claim 7**

Independent claim 7 recites the following elements that are not disclosed, taught, or suggested by Levin:

- (1) “a movable housing having a first end adjacent the first end of the main housing, the movable housing being adapted to move from a resting position to a cocking position”;
- (2) “the secondary spring being located adjacent to and between the retainer and the internal surface of the movable housing at the first end of the movable housing”; and
- (3) “decompressing the secondary spring to move the movable housing from the cocking position to the resting position, adjacent the main housing.”

Regarding the first element, the Office Action apparently ignored the Applicant’s amendments that clarified that the “first end” of the movable housing in claim 7 is adjacent to the first end of the main housing. It is not until the Office Action addressed the Applicant’s previously submitted arguments under its response to arguments section, which states that “the abutments 49 are interpreted as a first end of the movable housing,” that the Office Action addressed this language. Page 9 of the Office Action. Such an interpretation is fundamentally improper. As shown in FIGS. 2 and 3 of Levin, it is readily apparent that the internal abutment 49 is not an “end” of the outer sleeve 47, but rather, is located at the general center of the outer sleeve 47.

Regarding the second element recited in claim 7, the Office Action appears to rely on the same interpretation of the “first end” discussed above in reference to the first element. Thus, for the same reasons discussed above, Levin fails to disclose, teach, or suggest the second element. Additionally, as shown in FIGS. 4-7 of the patent application, the secondary spring 46 is adjacent to or abuts the retainer and the internal surface of the movable housing at the first end of the movable housing in the resting, cocking, cocked, and lancing positions. However, as shown in FIG. 2 of Levin, the bounce-back spring 45 is not adjacent to or abutting the internal abutment 49 (interpreted in the Office Action as the “first end”) in response to the Levin device being in the cocked position.

Regarding the third element, Levin simply fails to decompress the bounce-back spring 45 to move the movable housing from the cocking position to the resting position. The Office Action cited column 3, lines 2-4 of Levin in an attempt to find this third element which states “[t]his leaves the sleeve 47 free and the patient can now push it back down against the collar 7.” Thus, the patient is required to manually move the outer sleeve 47 from the cocking position to the resting position and not the bounce-back spring 45. Furthermore, as shown in FIG. 2 of Levin, the bounce-back spring 45 is not large enough in length to move the outer sleeve 47 from the cocking position to the resting/cocked position (47A and 49A representing the cocking position and 47 and 49 representing the resting/cocked position).

Thus, for at least the above reasons, independent claim 7 is not anticipated by or rendered obvious over Levin.

#### Dependent Claims 8-13

Claims 8-13 depend from independent claim 7. Thus, for at least the same reasons discussed above in reference to claim 7, dependent claims 8-13 are not anticipated by or rendered obvious over Levin. Additionally, several of the dependent claims include elements that are not disclosed, taught, or suggested by Levin.

For example, claim 8 recites “adjusting the spring ratio between the drive spring and the secondary spring to adjust a force applied to the lancet holder as it moves from the cocking position to the puncture position,” which is not disclosed, taught, or even suggested by Levin. The Office Action states that “Levin discloses wherein there is an act of adjusting the spring ratio between the drive spring and the secondary spring to adjust a force applied to the lancet holder as

it moves from the cocking position to the puncture position (column 2-3, lines 63-68, 1-13)."

Page 3 of the Office Action. Column 2, lines 63 to column 3, line 13 of Levin is as follows:

When one wishes to operate the device, the main spring 37 is again cocked, as is shown in phantom in FIG. 2. One pulls back on sleeve 47 to the position shown at 47A. This moves abutment 49 to the position shown in phantom at 49A pushing against flange 43, thus pulling back plunger 21 at which time the finger 33 engages in and is held by the hole 35 so that the spring 37 is now again compressed. This leaves the sleeve 47 free and the patient can now push it back down against the collar 7. The detent 51 engaging in the notch 53 gives a little "click" as the sleeve is pushed back down into the rest position, giving the patient both an audible and tactile indication that the sleeve has been fully returned to rest position and will not interfere with the next operation. Also, the detent serves to hold the sleeve in place and to not allow it to freely slide up and down. At the same time, button 55 is raised so that the patient can tell at a glance that the device is cocked and ready for a repetition of the operation.

The above quoted passage of Levin has nothing to do with "adjusting the spring ratio" as purported in the Office Action. In another example, claim 10 recites "wherein the secondary spring is not attached to the retainer of the shaft or the internal surface of the movable housing." This is not disclosed, taught, or suggested by Levin. In fact, FIG. 2 of Levin indicates that the bounce-back spring 45 is physically attached to the flange 43. Otherwise, the bounce-back spring would fall along the shaft 29. *See* Levin, column 2, lines 36-38 ("At the rear of the shaft 29 is a collar 41 having a flange 43 which retains a bounce back spring 45.").

### **Claim Rejections – 35 U.S.C. § 103**

Claims 1-13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Levin in view of European Patent No. EP0898936 ("LeVaughn").

#### **Independent Claim 1**

Independent claim 1 recites the following elements that are not disclosed, taught, or suggested by Levin for similar reasons discussed above in reference to claim 7:

- (1) "a movable housing having a first end adjacent the first end of the main housing";
- (2) "the secondary spring being located adjacent to and between the retainer and the internal surface of the movable housing at the first end of the movable housing"; and
- (3) "wherein the secondary spring is adapted to move the movable housing from the cocking position in which the movable housing is separated from the main housing to the resting position."

As discussed above in the Section 102 Rejection, independent claim 7 recites the following elements that are not disclosed, taught, or suggested by Levin:

- (1) “a movable housing having a first end adjacent the first end of the main housing”;
- (2) “the secondary spring being located adjacent to and between the retainer and the internal surface of the movable housing at the first end of the movable housing”; and
- (3) “decompressing the secondary spring to move the movable housing from the cocking position to the resting position, adjacent the main housing.”

Regarding both independent claims 1 and 7, LeVaughn also fails to disclose, teach, or suggest the second quoted element for both independent claims 1 and 7. As shown in FIGS. 3 and 4 of LeVaughn, return springs 50 are positioned in respective spring trays 48 of the movable housing 14. The left end of each return spring 50 is disposed against a left-hand internal surface of the spring tray 48 and the right end of each return spring 50 is disposed against a spring stop 52 integrally formed with the main housing 12. LeVaughn, paragraph 14. The return springs 50 are each attached to the respective spring stops 52, which is not adjacent to and between a retainer of a shaft and internal surface as recited in claims 1 and 7. *See* FIGS. 3 and 4. Thus, for at least this reason, independent claims 1 and 7 are not anticipated by or rendered obvious over Levin, LeVaughn, or any combination thereof.

Furthermore, the configurations of claims 1 and 7 are advantageous over the configurations of Levin, LeVaughn, or any combination thereof for several reasons, some of which are described in the present specification, which include the following:

[T]he secondary spring 46 is used to both move the movable housing 14 from the cocking position to the resting position as well as to return the lancet holder 36 from its puncture position to its resting position. Thus, the lancing device 10 is fully functional by utilizing only two springs.

Specification, paragraph 38. As shown in FIGS. 3 and 4 of LeVaughn, all of the illustrated embodiments require at least three springs. The present specification further describes:

The use of two opposing springs allows for the puncture strength to be adjusted merely by adjusting the spring ratio between the drive spring 42 and the secondary spring 46, reducing the need to compute the frictional interaction and mass of the various components of the device.

Specification, paragraph 39. Again, as shown in FIGS. 3 and 4 of LeVaughn, all of the illustrated embodiments require at least three springs. The present specification further describes:

The structure of the above-described lancing device 10 also allows for both the drive spring 42 and the secondary spring 46 to remain free floating on the shaft 38. Thus, the need for attaching one or both ends of each spring is eliminated, reducing the cost and time required to manufacture the lancing device 10.

Specification, paragraph 40. As described above and shown in FIGS. 3 and 4 of LeVaughn, all of the illustrated embodiments require at least three springs that are not free floating on a shaft, but, rather, are attached to the respective spring stops 52. Similarly, the bounce-back spring 45 of Levin is attached to a flange 43, as shown in FIG. 2 where the bounce-back spring 45 is held tight to the flange 43 and not allowed to float freely down along the shaft 21. *See also* Levin, column 2, lines 36-38 (“At the rear of the shaft 29 is a collar 41 having a flange 43 which retains a bounce back spring 45.”).

#### Dependent Claims 2-6

Claims 2-6 depend from independent claim 1. Thus, for at least the same reasons discussed above in reference to claim 1, dependent claims 2-6 are not anticipated by or rendered obvious over Levin, LeVaughn, or any combination thereof. Additionally, several of the dependent claims include elements that are not disclosed, taught, or suggested by Levin, LeVaughn, or any combination.

For example, claim 4 recites “wherein the secondary spring is not attached to the retainer of the shaft or the internal surface of the movable housing.” Claim 6 recites “wherein the secondary spring surrounds the entirety of the portion of the shaft enclosed within the movable housing.” As shown in FIG. 2 of Levin, the bounce-back spring 45 does not surround the entirety of the shaft enclosed in the movable housing.

**CONCLUSION**

The Applicant submits that the claims are in a condition for allowance and action toward that end is earnestly solicited. It is believed that no fees are due; however, should any additional fees be required (except for payment of the issue fee), the Commissioner is authorized to deduct the fees from Nixon Peabody Deposit Account No. 50-4181, Order No. 247082-000155USPX.

Respectfully submitted,

Date: October 6, 2009

By: /John C. Gatz, Reg. No. 41,774/  
John C. Gatz  
NIXON PEABODY LLP  
300 South Riverside Plaza  
16th Floor  
Chicago, IL 60606  
312-425-3900 - telephone  
312-425-3909 - telefax

ATTORNEY FOR APPLICANT